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In re:

LYDIA LUTAAYA.

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MOTION FOR RELIEF FROM STAY AND COMFORT ORDER - 1

The Honorable Christopher M Alston

Chapter 13

Hearing Date: March 31, 2016 Hearing Time: 9:30AM

Location: Seattle

Response Date: March 24, 2016

## UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

Chapter 13

Debtor. MOTION FOR RELIEF FROM STAY AND

Case No.: 16-10516-CMA

REQUEST FOR COMFORT ORDER

Boeing Employees' Credit Union ("BECU") moves this Court for an order terminating the automatic stay pursuant to 11 U.S.C § 362(d), allowing BECU to proceed with and complete a non-judicial foreclosure pursuant to its deed of trust on the real property commonly known as 3001 SE 10th St

UNIT 1013, BUILDING 4, OF SHADOW HAWK 1, A CONDOMINIUM RECORDED IN VOLUME 183 OF CONDOMINIUMS, PAGES 87 THROUGH 95, INCLUSIVE, ACCORDING TO THE DECLARATION THEREOF, RECORDED UNDER KING COUNTY RECORDING NO. 20020812001719 AND ANY AMENDMENTS THERETO.

#1013, Renton, WA 98058 ("Property") and legally described as:

BECU further seeks relief in order to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement and to contact the Debtor via telephone or written correspondence to offer such an agreement, which shall be non-recourse unless included in a reaffirmation agreement.

BECU also moves the Court that enforcement of this order not be stayed for fourteen (14) days pursuant to F.R.B.P. 4001(a)(3).

This motion is made on the grounds that the property is no longer part of the estate and not protected by 11 USC § (a)(3).

**Obligation and Collateral.** BECU was the holder and owner of a promissory note in the original amount of \$275,000.00 executed on October 19, 2006, by Lydia Lutaaya, A single woman, as her separate estate. This note was secured by a Deed of Trust of even date on the real property described herein. The Debtor failed to make payments on her mortgage and BECU commenced a non-judicial foreclosure.

BECU Legal/Recovery Department PO Box 97050 Seattle, WA 98124-9750 Telephone: 206-805-5630 Fax: 206-835-8044

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**Status of Loan, Foreclosure, and Eviction.** The Property was sold at auction through the non-judicial foreclosure process on or about September 11, 2015. The property reverted back to BECU and a Trustee's Deed was recorded in King County on or about September 28, 2015, under recording number 20150928000011. Under RCW 61.24.050, the delivery of the trustee's deed conveys all right, title, and interest of the grantor to the purchaser.

**Writ of Restitution.** The King County Superior Court issued an Order Awarding Possession to Directing Clerk to Issue Writ of Restitution on or about January 5, 2016, awarding possession of the property to BECU, under cause number 15-2-27549-6 KNT.

Therefore, because a foreclosure sale has already taken place and because the state court has already awarded possession to BECU, the Property is no longer part of the bankruptcy estate and not protected by the automatic stay.

Accordingly, BECU seeks relief under two prongs of the Bankruptcy Code.

- 1) BECU requests a comfort order stating that the property is no longer part of bankruptcy estate and therefore BECU may direct the sheriff to execute the writ of restitution and evict the Debtor from the Property;
- 2) Alternatively, BECU requests Relief from the Automatic Stay under 11 USC § 362(d), for an order terminating the Automatic Stay because the Debtor does not have equity in such property because it was sold at foreclosure; and such property is not necessary to an effective reorganization.

This motion is based on the Declaration of Binh Nguyen, and the records and files herein. A proposed order is attached.

Dated this 10th day of March, 2016.

**BOEING EMPLOYEES' CREDIT UNION** 

By: /s/ Ryan Ko
Ryan Ko
WSBA #40830
Attorney for BECU

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